

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

EFRAIN CASTILLO,
Plaintiff,

v.

**BRYCE A. PINNELL AND
W.H. KENT, INC.**

Defendants,

§
§
§
§
§
§
§
§

Cause No. _____

JURY DEMAND

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

PLEASE TAKE NOTICE THAT, pursuant to 28 USC §§ 1441 and 1446, Defendant W.H. Kent, Inc. and Bryce A. Pinnell (“Defendants”), by undersigned counsel, hereby remove the state court action styled *Efrain Castillo vs. Bryce A. Pinnell and W.H. Kent, Inc.*, from the 462nd District Court of Denton County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division. This action is properly removed to Federal Court for the reasons set forth below.

Defendants are entitled to removal because diversity jurisdiction lies in the United States District Court for the Northern District of Texas. Diversity jurisdiction exists where there is complete diversity between the Plaintiff and Defendants and where the amount in controversy exceeds \$75,000.00. 28 U.S.C. § 1332(a). In this matter, there is complete diversity of jurisdiction, and the amount in controversy exceeds \$75,000.00.

I. Documents Attached Pursuant to Local Rules

1. Plaintiff Efrain Castillo filed a civil action against Defendants in the 462nd District Court of Denton County, Texas styled *Efrain Castillo vs. Bryce A. Pinnell and W.H. Kent, Inc*

Cause No. 20-8422-462 (hereinafter the “State Court Action”). Pursuant to L.R. CV-81(a), the style of the State Court Action as it appeared in state court was:

CAUSE NO. 20-8422-462

EFRAIN CASTILLO,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
vs.	§	DENTON COUNTY, TEXAS
BRYCE A. PINNELL and	§	
W. H. KENT INC.	§	
Defendants	§	462 nd JUDICIAL DISTRICT COURT

2. Pursuant to L.R. CV-81(b), a jury was demanded in the State Court Action by Defendant W.H. Kent, Inc. and Defendant Bryce A. Pinnell.

3. Pursuant to L.R. CV-81(b)(1), all parties to the State Court Action are: (1) Plaintiff Efrain Castillo; (2) Defendant Bryce A. Pinnell; and (3) Defendant W.H. Kent, Inc. The current status of the state court action prior to this removal is pending.

4. Pursuant to L.R. CV-81(b)(2), a civil cover sheet is attached as **Exhibit A**. A copy of the State Court Action docket sheet is attached as **Exhibit B**. An index of all documents, including the date each document was filed in the State Court Action, is attached as **Exhibit C**. A copy of each document filed in the State Court Action is attached as **Exhibit D-1 through D-6**.

5. Pursuant to L.R. CV-81(b)(3), a list of attorneys involved in the State Court Action is attached as **Exhibit E**.

6. Pursuant to L.R. CV-81(b)(4), a record of which parties have requested a jury trial is attached as **Exhibit F**.

7. Pursuant to L.R. CV-81(b)(5), the court from which the case was removed is:

462nd District Court of Denton County Texas
1450 East McKinney Street, 4th Floor
Denton, Texas 76201

II. This Notice Complies with the Procedural Requisites of 28 U.S.C. §§ 1441 and 1446

8. Plaintiff Efrain Castillo filed a civil action against Defendants in the 462nd District Court of Denton County, Texas styled *Efrain Castillo vs. Bryce A. Pinnell and W.H. Kent, Inc.* See **Exhibit D-1**.

9. Plaintiff provided service of process for W.H. Kent, Inc. to the Texas Secretary of State on November 3, 2020. W.H. Kent, Inc. received the service of process, and actual notice of the suit, on November 25, 2020. See **Exhibit G**. Plaintiff sought service of process on Bryce A. Pinnell through the Chairman of the Texas Transportation Commission, but Pinnell has not yet received it.

10. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)(1), as it is filed within thirty days of when Defendant first received a copy of Plaintiff's Original Petition.

11. Venue is proper in this Division and District pursuant to 28 U.S.C. §1441(a) because the State Court Action was filed in Denton County, Texas, which is within the Sherman Division of the United States District Court for the Eastern District of Texas.

12. As required by 28 U.S.C. § 1446(d) Defendants filed the attached Notice of Filing of Notice of Removal with the 462nd District Court of Denton County, Texas, on the date the original Notice of Removal was filed. See **Exhibit I**, Notice of Filing of Notice of Removal.

III. This Court Has Diversity Jurisdiction Over This Case

13. Diversity jurisdiction exists where there is complete diversity between Plaintiff and Defendants and where the amount in controversy exceeds \$75,000.00. See 28 U.S.C. §1332(a). There is complete diversity between Plaintiff and Defendants.

14. Plaintiff is a citizen of the State of Texas. Plaintiff has a fixed residence located at 4470 Marsells Street, Dallas, Texas 75211, at which Plaintiff intends to remain indefinitely. See **Exhibit D-1**, Section II.

15. A corporation is a citizen of every state in which it is incorporated and where it has its principal place of business. *See 28 U.S.C. §1332(c)(1)*. Defendant W.H. Kent, Inc. is incorporated in and has its principal place of business in Morrisonville, Illinois. *See Exhibit G. Affidavit of Steve Bethard*. Accordingly, Defendant W.H. Kent, Inc. is a citizen of Illinois for purposes of 28 U.S.C. §1332(a).

16. Defendant Bryce A. Pinnell is a resident and citizen of Illinois and intends to remain in Illinois indefinitely. *See Exhibit H*. For diversity purposes, an opposing party must be a citizen of a different state than defendants. 28 U.S.C. § 1332(a)(2).

17. Because Plaintiff is a resident of the State of Texas, and Defendants are citizens of the State of Illinois, there is complete diversity of citizenship between Plaintiff and Defendants as required by 8 U.S.C. § 1332(a),(c).

18. Plaintiff alleges in his Original Petition that he is seeking actual damages in an amount “over \$200,000 but not more than \$1,000,000.00.” *See Exhibit D-1* at Section VIII. Accordingly, Plaintiff has asserted alleged damages in excess of the \$75,000.00 minimum jurisdictional amount required by 28 U.S.C. §1332.

19. As there is complete diversity between Plaintiff and Defendants, and the amount in controversy exceeds the sum of \$75,000.00, this case satisfies the jurisdictional requirements set forth in 28 U.S.C. §1332.

20. All Defendants are represented by the undersigned counsel and all Defendants join and consent to this removal.

WHEREFORE, PREMISES CONSIDERED, Defendants, pursuant to the foregoing statutes, removed this action from the 462nd District Court in Denton County, Texas, styled *Efrain Castillo vs. Bryce A. Pinnell and W.H. Kent, Inc.*, Cause No. 20-8422-462, to this Court on the 16th day of December 2020.

Respectfully submitted,

**MACDONALD DEVIN ZIEGLER MADDEN KENEFICK
& HARRIS, P.C.**

/s/ Patrick F. Madden

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with the Texas Rules of Civil Procedure, the undersigned served a true and correct copy of the foregoing document on counsel of record via electronic filing, this 21st day of December, 2020:

/s/ Patrick F. Madden

Patrick F. Madden

Via eServe

Chad Matthews

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MATTHEWS & FORESTER

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Counsel for Plaintiff